

Appl. No. 10/678,206
Atty. Docket No. 9049
Amdt. dated 04/08/2005
Reply to Office Action of 12/08/2004
Customer No. 27752

REMARKS

Amendments to the Specification

The specification has been amended as shown above to delete "US Design application Serial No. 29/168,576 (Case D808), filed on October 4, 2002" from the statement of the claim for domestic priority.

It is believed that this amendment to the specification does not involve the introduction of new matter.

Amendments to the Claims

Claims 1-3 are pending in the present application. No additional claims fee is believed to be due.

Claims 1, 2, and 3 have been amended as shown above. Support for the amendments to claims 1 and 2 can be found in Figures 1-8 and at page 4, lines 15-17, lines 20-23, and lines 33-34 of the specification. Support for the amendments to claim 3 also can be found in Figures 1-8 and at page 4, lines 15-17, lines 20-23, and lines 33-34, as well as at page 3, lines 29-32 of the specification.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC 102(b) Over US Patent No. 4,211,247 to Morganroth

Claim 1 is rejected under 35 USC 102(b) as being anticipated by US Patent No. 4,211,247 to Morganroth ("Morganroth"). The Examiner asserts that Morganroth discloses a hair treatment applicator, as depicted in Figs. 1-2 of Morganroth. The Examiner further asserts that the hair treatment applicator comprises a handle (1) and a plurality of retaining structures (32, 24) connected to the handle, each of the retaining structures being separated from each other by a separating volume (39), and wherein the plurality of retaining structures hold the hair treatment. Applicants respectfully traverse the present rejection based on the following comments.

Morganroth does not disclose each and every element of Applicants' claimed hair treatment applicator, and, thus, Morganroth is not anticipatory. As currently amended, claim 1 is directed to a hair treatment applicator which comprises a handle having a

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longitudinal axis, and a plurality of retaining structures connected to the handle, wherein each of the plurality of retaining structures is separated from each other by a separation volume, wherein *each of the plurality of retaining structures is substantially parallel to each other and is substantially perpendicular to the longitudinal axis of the handle*, and wherein the plurality of retaining structures hold the hair treatment. Applicants' hair treatment applicator enables a user to apply a hair treatment composition simultaneously to a plurality of separate sections of hair while leaving a separate untreated section of hair between the treated sections of hair. In use, sections of hair pass through the retaining structures, which hold the hair treatment, resulting in the hair treatment being applied to these sections of hair. At the same time, other hair passes through the separation volume, which does not contain the hair treatment, leaving this other hair untreated. The substantially parallel configuration of the retaining structures, relative to each other, provides a more uniform application of the hair treatment simultaneously to a plurality of separate sections of hair, and straighter lines of separation between treated and untreated sections of hair. The substantially perpendicular configuration of the retaining structures, relative to the longitudinal axis of the handle, provides comfort and ease of use to a user applying the hair treatment.

In contrast to the hair treatment applicator of claim 1, the device of Morganroth comprises a squeeze bottle (1) which is held by a user, a hair parting means (24), and a hair color altering liquid spreading means (32). Although Morganroth teaches that liquid may pass through one or both of the hair parting means and the liquid spreading means to be applied to the hair, the hair parting means and the liquid spreading means are not configured to be parallel to each other. Instead, the hair parting means and the liquid spreading means are configured at an angle to each other. Nor are the hair parting means and the liquid spreading means configured to be perpendicular to the longitudinal axis of the squeeze bottle. See Figs. 1 and 2 of Morganroth. Thus, Morganroth fails to disclose each and every element of Applicants' claim 1.

Additionally, Morganroth does not provide any suggestion or motivation to configure the hair parting means and the liquid spreading means as Applicants' claimed retaining structures are configured. The configuration of the hair parting means and the liquid spreading means is designed for parting the hair to form a single tress to which liquid is applied and then spread. See column 22, lines 8-12 of Morganroth (stating that

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the device of Figs. 1 and 2 is adapted "for distributing liquid into the shaft of *a tress* of hair" (emphasis added)). Indeed, Morganroth describes the liquid spreading means as being "transverse" to the hair parting means. See column 8, lines 62-67 of Morganroth. Thus, Morganroth teaches away from a parallel configuration of the hair parting means and the liquid spreading means.

Accordingly, Applicants' claim 1 is novel and nonobvious over Morganroth.

Rejection Under 35 USC 102(b) Over US Patent No. 4,399,827 to Fuhs

Claim 2 is rejected under 35 USC 102(b) as being anticipated by US Patent No. 4,399,827 to Fuhs ("Fuhs"). The Examiner asserts that Fuhs discloses a hair treatment applicator, as depicted in Fig. 1 of Fuhs. The Examiner further asserts that the hair treatment applicator comprises a handle (10), a plurality of heads (13, 14) being connected to the handle, a retaining structure (12, 14) being connected to each of the heads and holding the hair treatment, and each of the heads being separated by a separation volume. Applicants respectfully traverse the present rejection based on the following comments.

Fuhs does not disclose each and every element of Applicants' claimed hair treatment applicator, and, thus, Fuhs is not anticipatory. As currently amended, claim 2 is directed to a hair treatment applicator which comprises a handle having a longitudinal axis, a plurality of heads being connected to the handle, and a retaining structure being connected to each of the plurality of heads, wherein each head is separated from each other head by a separation volume, wherein *the retaining structure is substantially parallel to each other retaining structure and is substantially perpendicular to said longitudinal axis of said handle*, and wherein the retaining structure holds the hair treatment. As discussed above, the configuration of Applicants' hair treatment applicator enables a user to apply a hair treatment composition simultaneously to a plurality of separate sections of hair while leaving a separate untreated section of hair between the treated sections of hair.

In contrast to the hair treatment applicator of claim 2, the hair-tinting implement of Fuhs comprises a container (10), a comb (12), a spike-like hair spreader (13), a flat brush (14), and a common top piece (16). While Fuhs teaches that the tinting medium may be forced out near the comb at the hair spreader or at the brush to be applied to the

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hair, the comb and the brush are not configured to be parallel to each other. Nor are the comb and the brush configured to be perpendicular to the longitudinal axis of the container. See Fig. 1 of Fuhs. Thus, Fuhs fails to disclose each and every element of Applicants' claim 2.

Additionally, Fuhs does not provide any suggestion or motivation to configure the comb and the brush as Applicants' claimed retaining structures are configured. Fuhs discloses that the comb and the brush are arranged on the implement "in a manner suited to their function". See column 3, lines 51-52. The implement of Fuhs is designed for the use of one of the comb and the brush independently of the other for applying tinting medium to the whole head one portion of hair at a time. The respective outlet for the tinting medium near the comb at the hair spreader and at the brush can be closed selectively so that the tinting medium can be applied to the hair either by the hair spreader and comb or by the brush, but not by both at the same time. See column 3, lines 7-8 and column 4, lines 64-66 of Fuhs. To maintain independent use or operation of the comb and the brush for the implement of Fuhs, one of ordinary skill in the art would not be motivated to configure the comb and the brush in the configuration of Applicants' claimed retaining structures, which are designed for simultaneous application to the hair.

Accordingly, Applicants' claim 2 is novel and nonobvious over Fuhs.

Rejection Under 35 USC 102(b) Over US Patent No. 4,566,472 to Mueller et al.

Claim 3 is rejected under 35 USC 102(b) as being anticipated by US Patent No. 4,566,472 to Mueller et al. ("Mueller"). The Examiner asserts that Mueller discloses a hair treatment applicator, as depicted in Fig. 1 of Mueller. The Examiner further asserts that the hair treatment applicator comprises a handle (3), a first head (2) being connected to the handle, the first head having a plurality of first tines (4) forming a first retaining volume, a second head connected to the handle, the second head having a plurality of second tines (3) forming a second retaining volume (12), and a separation volume which separates the first and second retaining volumes, wherein the first and second retaining volumes hold the hair treatment. Applicants respectfully traverse the present rejection based on the following comments.

Mueller does not disclose each and every element of Applicants' claimed hair treatment applicator, and, thus, Mueller is not anticipatory. As currently amended, claim

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3 is directed to a hair treatment applicator which comprises a handle having a longitudinal axis, a first head being connected to the handle, the first head having a plurality of first tines *disposed in a substantially square pattern* on the first head and forming a first retaining volume, a second head being connected to the handle, the second head having a plurality of second tines *disposed in a substantially square pattern* on the second head and forming a second retaining volume, wherein *the plurality of first tines and the plurality of second tines are substantially parallel to each other and are substantially perpendicular to the longitudinal axis of the handle*, and a separation volume, wherein the first retaining volume and said second retaining volume are separated by the separation volume, and wherein the first and second retaining volumes hold the hair treatment. As discussed above, the configuration of Applicants' hair treatment applicator enables a user to apply a hair treatment composition simultaneously to a plurality of separate sections of hair while leaving a separate untreated section of hair between the treated sections of hair.

In contrast to the hair treatment applicator of claim 3, the apparatus for applying a color medium to hair of Mueller comprises an elongate comb back (2), a comb handle (3), comb teeth (4) on one side of the comb back and having color chambers (6), other comb teeth (13) on the other side of the comb back extending in a direction opposite of teeth (4), and a slot (11) in the handle and having a color chamber (12). Even though Mueller discloses that a color medium may be applied to hair by pulling either the comb teeth (4) or the slot (11) through the hair, the comb teeth and the slot are not configured to be parallel to each other. Nor are the comb teeth and the slot configured to be perpendicular to the longitudinal axis of the handle. Rather, Fig. 1 of Mueller shows the comb teeth and the slot to be perpendicular to each other. Furthermore, neither the comb teeth nor the slot are disposed in a substantially square pattern. Instead, the comb teeth and the tips of the slot are disposed linearly. Thus, Mueller fails to disclose each and every element of Applicants' claim 3.

Additionally, Mueller does not provide any suggestion or motivation to configure the comb teeth and the slot as Applicants' claimed pluralities of first and second tines are configured. First, Mueller expressly teaches that the comb teeth (4) are used to apply color medium to several narrow and precisely limited strands of hair in one operation, whereas the slot (11) is used separately to color only a single narrow strand of hair in one operation. See column 4, lines 43-68 of Mueller. Mueller also expressly teaches that the

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slot extends longitudinally of the handle. See column 4, lines 13-15 of Mueller. Thus, one of ordinary skill in the art would not be motivated to configure the comb teeth and the slot parallel to each other and in a manner suitable for simultaneous use. Second, Mueller states that the comb teeth (4) are provided on one side of the *elongate* comb back, suggesting a linear configuration. Fig. 1 of Mueller also suggests a linear configuration of the comb teeth. No mention is made of another configuration, such as the substantially square pattern of Applicants' claimed tines. Thus, one of ordinary skill in the art would not be motivated to configure the comb teeth in a substantially square pattern.

Accordingly, Applicants' claim 3 is novel and nonobvious over Mueller.

CONCLUSION

In light of the amendments and remarks presented herein, it is requested that the Examiner reconsider and withdraw the present rejections. Early and favorable action in the case is respectfully requested.

Applicant has made an earnest effort to place their application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, Applicant respectfully requests reconsideration of this application and allowance of Claims 1-3.

Respectfully submitted,
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